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TO: The Honorable Melony Griffith, Chair
Senate Finance Committee
The Honorable Guy Guzzone, Chair
Senate Budget and Taxation Committee
The Honorable C. T. Wilson, Chair
House Economic Matters Committee

FROM: The Office of the Attorney General, Consumer Protection Division

RE: SB516/HB556 – Cannabis Reform

The Consumer Protection Division of the Office of the Attorney General supports HB556/SB516, Cannabis Reform, with friendly amendments to provide minimum, baseline labeling and advertising consumer protections. Most of these suggested changes are offered in an effort to strengthen the protections against and prohibition of acts that would make cannabis and cannabis products attractive to underage persons, borrowing from best practices in other states and global experience with the effects of tobacco addiction on multiple generations. Drawing from that experience, we urge legislators to consider robust guardrails at the outset to mitigate potential known and unknown harm – as we have learned, some harm cannot be undone.

SUBTITLE 2. CANNABIS REGULATION AND ENFORCEMENT DIVISION

36-203

- (A) THE DIVISION SHALL:
- (2) ON OR BEFORE JULY 1, 2023, ADOPT EMERGENCY REGULATIONS TO:
- (V) ESTABLISH OPERATING REQUIREMENTS FOR CANNABIS LICENSEES,

INCLUDING REQUIREMENTS FOR:

4. PACKAGING AND LABELING OF CANNABIS AND CANNABIS RELATED PRODUCTS, **INCLUDING PLAIN AND OPAQUE CHILD RESISTENT PACKAGING AND WARNINGS, INCLUDING “KEEP AWAY FROM CHILDREN”**; AND

SUBTITLE 9. ADVERTISING.

36–901.

(A) “ADVERTISMENT” MEANS THE PUBLICATION, DISSEMINATION, OR CIRCULATION OF ANY AUDITORY, VISUAL, DIGITAL, ORAL OR WRITTEN MATTER, INCLUDING LABELING, PACKAGING, AND BRANDING, THAT IS DIRECTLY OR INDIRECTLY CALCULATED TO INDUCE THE SALE OF CANNABIS OR ANY CANNABIS-RELATED PRODUCT OR SERVICE.

Rationale: We added a definition of advertisement because stakeholders should be aware that advertising is broadly defined to ensure consumer protections.

(B) ADVERTISEMENTS FOR MEDICAL CANNABIS AND MEDICAL CANNABIS PRODUCTS OR MEDICAL CANNABIS-RELATED SERVICES THAT MAKE THERAPEUTIC OR MEDICAL CLAIMS SHALL:

(1) BE SUPPORTED BY COMPETENT AND RELIABLE SCIENTIFIC EVIDENCE; ~~SUBSTANTIAL CLINICAL EVIDENCE OR SUBSTANTIAL CLINICAL DATA~~; AND

(2) INCLUDE INFORMATION ON THE MOST ~~SIGNIFICANT~~ SERIOUS AND MOST COMMON SIDE EFFECTS OR RISKS ASSOCIATED WITH THE USE OF CANNABIS.

Rationale: We replace the standard for making medical or therapeutic claims because “substantial clinical experience” or “substantial clinical data” are standards applied to certain types of claims involving prescription drugs that have gone through the FDA’s rigorous pre-market approval process. As cannabis has not gone through this process, and is not an FDA-approved prescription drug, any medical or therapeutic claims should be measured against the more rigorous FTC standard of “competent and reliable scientific evidence.” The FTC standard of “competent and reliable scientific evidence” was applied in *T-Up, Inc. v. Consumer Protection Division*, 145 Md. App. 27 (2002), which defined the standard to “include[s] tests, analysis, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. For

health products such as those sold in *T-Up*, competent and reliable scientific evidence shall include at least two adequate, and well-controlled, double-blinded clinical studies."

We replace "significant" side effects with "serious and most common" side effects in the requirement at (2) because a side effect may be serious and not very common, or not so serious but very common, and what is serious may be different depending on other qualities of the user (age, overall health, usage, and more), and common side effects may become serious if multiplied. We believe replacing "significant" with "serious and most common" provides important information to consumers and brings the requirement closer to the requirements under federal law. Moreover, [FDA guidance](#) permits the disclosure of *the most serious and most common risks* as an alternate disclosure approach in direct-to-consumer print ads about prescription drugs.

(C) ADVERTISEMENTS FOR MEDICAL CANNABIS OR MEDICAL CANNABIS PRODUCTS SHALL INCLUDE A STATEMENT THAT THE PRODUCT IS FOR USE ONLY BY A QUALIFYING PATIENT.

(D) ADVERTISEMENTS FOR ADULT-USE CANNABIS OR ADULT-USE CANNABIS-RELATED PRODUCTS OR SERVICES SHALL NOT INCLUDE HEALTH, THERAPEUTIC OR MEDICINAL CLAIMS.

Rationale: We add the prohibition at (D) because the FDA has not approved Cannabis as an over-the-counter drug, dietary supplement, or food additive. The FDA has issued warning letters to firms marketing CBD products to treat diseases or for other therapeutic uses: <https://www.fda.gov/news-events/public-health-focus/warning-letters-and-test-results-cannabidiol-related-products>

36-902.

(A) AN ADVERTISEMENT FOR A CANNABIS LICENSEE, CANNABIS PRODUCT, OR CANNABIS-RELATED PRODUCT OR SERVICE MAY NOT:

- (1) ~~MAKE A STATEMENT THAT IS FALSE OR MISLEADING IN A MATERIAL WAY OR IS OTHERWISE VIOLATE~~ TITLE 13, SUBTITLE 3 OF THE COMMERCIAL LAW ARTICLE;**

Rationale: We strike the words "in a material way" from page 64, line 28 in the bill. This language is taken from the existing (medical) cannabis statute which prohibits advertisements that make a statement that is false or misleading *in a material way* or is otherwise a violation of Title 13, Subtitle 3 of the Commercial Law Article. We recommend removing the phrase "in a material way," because under the Consumer Protection Act materiality is relevant to omissions of fact, not the provision on false and

misleading statements. To apply materiality to statements rather than omissions thus would be inconsistent with current State law and may create confusion.

(2) DIRECTLY OR INDIRECTLY TARGET INDIVIDUALS UNDER THE AGE OF 21 OR TAKE ANY ACTION THE PURPOSE OF WHICH IS TO INITIATE, MAINTAIN OR INCREASE THE INCIDENCE OF CANNABIS USE BY INDIVIDUALS UNDER AGE 21;

(3) DEPICT OR DISPLAY CANNABIS OR CANNABIS-RELATED PRODUCTS OR SERVICES THAT RESEMBLE THE FORM OF A HUMAN, ANIMAL, INSECT, FRUIT, CANDY, OR TOY; IMITATE FOOD OR DRINK BRANDS; OR RESEMBLE FOOD OR DRINK MARKETED AS SNACKS OR MARKETED TO CHILDREN;

(4) CONTAIN A DESIGN, AN ILLUSTRATION, A PICTURE, OR A REPRESENTATION THAT:

(I) TARGETS OR IS ATTRACTIVE TO MINORS, INCLUDING THE USE OF NEON COLORS, A CELEBRITY, A MASCOT, A CHARACTER DEVELOPED FOR CHILDREN, CARTOON CHARACTER, OR ANY OTHER DEPICTION THAT IS COMMONLY USED TO MARKET PRODUCTS TO MINORS;

(II) DEPICTS OR DISPLAYS THE USE OF CANNABIS OR A CANNABIS-RELATED PRODUCT OR SERVICE INCLUDING CONSUMPTION, SMOKING, OR VAPING OF CANNABIS.

(III) DEPICTS OR DISPLAYS ~~ENCOURAGES OR PROMOTES~~ CANNABIS OR A CANNABIS-RELATED PRODUCT OR SERVICE FOR USE AS AN INTOXICANT; OR

(IV) IS OBSCENE.

(5) ~~ENGAGE IN ADVERTISING~~ BE MADE BY MEANS OF TELEVISION, RADIO, INTERNET, MOBILE APPLICATION, SOCIAL MEDIA, OR OTHER ELECTRONIC COMMUNICATION, OR PRINT PUBLICATION, UNLESS AT LEAST 85% OF THE AUDIENCE IS REASONABLY EXPECTED TO BE AT LEAST 21 YEARS OLD AS DETERMINED BY RELIABLE AND CURRENT AUDIENCE COMPOSITION DATA.

(6) EXCEPT FOR EXTERIOR SIGNAGE DISPLAYING ONLY THE NAME OF THE LICENSED CANNABIS BUSINESS ESTABLISHMENT, BE MADE ON THE SIDE OF A BUILDING OR ANOTHER PUBLICLY VISIBLE LOCATION OF ANY FORM, INCLUDING A SIGN, A POSTER, A PLACARD, A

DEVICE, A GRAPHIC DISPLAY, AN OUTDOOR BILLBOARD, OR A FREESTANDING SIGNBOARD.

(7) PROMOTE CANNABIS OR CANNABIS-RELATED PRODUCTS OR SERVICES ON SCHOOL, COLLEGE OR UNIVERSITY PROPERTY EXCEPT AT GRADUATE OR PROFESSIONAL COLLEGES OR UNIVERSITIES WHERE MORE THAN 85% OF THE STUDENTS ARE ABOVE THE AGE OF 21.

(B) (1) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, EACH WEBSITE OWNED, MANAGED, OR OPERATED BY A CANNABIS LICENSEE SHALL ADVERTISING CANNABIS OR CANNABIS-RELATED PRODUCTS OR SERVICES SHALL EMPLOY A NEUTRAL AGE-SCREENING MECHANISM, INCLUDING BY USING AN AGE-GATE, AGE-SCREEN, OR AGE VERIFICATION MECHANISM, THAT VERIFIES THAT THE USER IS AT LEAST 21 YEARS OLD BEFORE THE USER CAN ACCESS OR VIEW ANY CONTENT AND BEFORE THE WEBSITE CAN COLLECT THE USER'S ADDRESS, EMAIL ADDRESS, PHONE NUMBER OR OTHER CONTACT INFORMATION TO DISSEMINATE ADVERTISEMENTS.

(II) IF A WEBSITE IS APPROPRIATE FOR A QUALIFYING PATIENT WHO IS UNDER THE AGE OF 21 YEARS, THE WEBSITE SHALL PROVIDE AN ALTERNATIVE SCREENING MECHANISM FOR THE QUALIFYING PATIENT.

(2) AN ADVERTISEMENT PLACED ON SOCIAL MEDIA OR A MOBILE APPLICATION SHALL INCLUDE A NOTIFICATION THAT AN INDIVIDUAL MUST BE AT LEAST 21 YEARS OLD TO VIEW THE CONTENT.

(C) REQUIREMENTS AND PROHIBITIONS APPLICABLE TO A CANNABIS LICENSEE, CANNABIS PRODUCT, OR CANNABIS-RELATED PRODUCT OR SERVICE IN THIS SUBTITLE MAY NOT BE AVOIDED BY HIRING OR CONTRACTING WITH A THIRD-PARTY, OR OUTSOURCING ADVERTISING THAT DOES NOT COMPLY WITH THIS SUBTITLE.

(D) A CANNABIS LICENSEE MAY NOT PERMIT USE OF THE CANNABIS LICENSEE'S TRADEMARKS, BRANDS, NAMES, LOCATIONS OR OTHER DISTINGUISHING CHARACTERISTICS FOR THIRD-PARTY USE ON ADVERTISING THAT DOES NOT COMPLY WITH THIS SUBTITLE.

(E) THE DIVISION, IN CONSULTATION WITH THE CONSUMER PROTECTION DIVISION SHALL ADOPT REGULATIONS TO ESTABLISH:

(1) PROCEDURES FOR THE ENFORCEMENT OF THIS SECTION; AND

(2) A PROCESS FOR AN INDIVIDUAL TO VOLUNTARILY SUBMIT AN ADVERTISEMENT TO THE DIVISION FOR AN ADVISORY OPINION ON WHETHER THE ADVERTISEMENT COMPLIES WITH THE RESTRICTIONS ON ADVERTISEMENTS FOR CANNABIS, CANNABIS-RELATED PRODUCTS, EDIBLE CANNABIS PRODUCTS, AND CANNABIS-RELATED SERVICES.

Rationale:

We made multiple changes to this section in an effort to strengthen the protections against and prohibition of acts that would make cannabis and cannabis products attractive to underage persons.

We add prohibitions against targeting individuals under age 21 and the depiction or display of cannabis in a way likely to be attractive to minors.

We add provisions to ensure that packaging and labeling comports with prohibitions against packaging in a manner attractive to minors, and to ensure that prohibitions are not avoided by the licensee asking another person or entity to do something they are not allowed to do themselves.

There is an enormous body of evidence about the risks to children who might accidentally or unknowingly ingest cannabis products, especially edibles that are “disguised” as branded foods (e.g., Cannabis Doritos or Gummy Bears), or packaged or labeled in a way that would attract minors (use of cartoons, animal or fruit shaped products, likeness of a character developed for children, and more). This is just one of multiple news articles noting the increase in calls to poison control centers about kids under 5 eating edibles packaged as treat or snack foods. The study reported here noted a quarter of the calls resulted in kids needing hospitalization, and 8% needing intensive care. <https://www.nbcnews.com/health/health-news/reports-young-children-accidentally-eating-marijuana-edibles-soar-rcna63501>

We add a prohibition against promotion of cannabis at schools or colleges unless 85% of the student body is above the age of 21. Multiple studies have concluded that cannabis use in late adolescence and early adulthood is associated with a range of adverse outcomes in later life, including poorer educational outcomes, lower income, greater welfare dependence, and lower social relationship satisfaction. (See, for example, <https://store.samhsa.gov/sites/default/files/pep21-06-01-001.pdf>) In addition, possession and sale of cannabis remains illegal under federal law, and colleges that do not ban illicit substances on school grounds risk forfeiting federal funds in financial aid, research grants, and contracts. It does not help our colleges and universities to enforce a ban against cannabis if we allow it to be advertised on undergraduate campuses.

We clarify and strengthen the verification procedures licensees must use before allowing users to enter their websites or receive advertisements.

We appreciate the Committee's consideration of these amendments which should provide the Commission with minimum baseline standards and provide the Cannabis industry an opportunity to succeed without jeopardizing the health and welfare of Marylanders, particularly future generations. Since the full effects of legalization on public health, safety, and criminal justice will take decades to become apparent, we urge caution while the market stabilizes. With these friendly amendments in mind, we support a favorable report on HB556/SB516 – Cannabis Reform.